

CCRB INVESTIGATIVE RECOMMENDATION

Investigator: Whitney Beber	Team: Squad #8	CCRB Case #: 201808938	<input type="checkbox"/> Force	<input type="checkbox"/> Discourt.	<input type="checkbox"/> U.S.
			<input checked="" type="checkbox"/> Abuse	<input type="checkbox"/> O.L.	<input type="checkbox"/> Injury
Incident Date(s) Monday, 10/29/2018 9:55 PM	Location of Incident: Wortman Avenue and Barbey Street	Precinct: 75	18 Mo. SOL 4/29/2020	EO SOL 12/14/2020	
Date/Time CV Reported Tue, 10/30/2018 11:48 AM	CV Reported At: CCRB	How CV Reported: Phone	Date/Time Received at CCRB Tue, 10/30/2018 11:48 AM		

Complainant/Victim	Type	Home Address

Subject Officer(s)	Shield	TaxID	Command
1. POM Thomas Little	24750	953001	075 PCT
2. POM Christopher Bracco	08029	963410	075 PCT

Officer(s)	Allegation	Investigator Recommendation
A.POM Thomas Little	Abuse: Police Officer Thomas Little questioned § 87(2)(b)	
B.POM Thomas Little	Abuse: Police Officer Thomas Little searched the vehicle in which § 87(2)(b) was an occupant.	
C.POM Christopher Bracco	Abuse: Police Officer Christopher Bracco searched the vehicle in which § 87(2)(b) was an occupant.	
D.POM Thomas Little	Abuse: Police Officer Thomas Little threatened to arrest § 87(2)(b)	

Case Summary

On October 30, 2018, § 87(2)(b) filed the following complaint with the New York City Complaint Review Board (CCRB) over the phone. On October 30, 2018, the CCRB received the complaint.

On October 29, 2018, at approximately 9:55 p.m. § 87(2)(b) was double parked on Wortman Avenue in the vicinity of Wortman Avenue and Barbey Street in Brooklyn. A marked police vehicle pulled up behind him. Police Officer Thomas Little and Police Officer Christopher Bracco of the 75th Precinct, approached his vehicle. Police Officer Little approached his driver's side and Police Officer Bracco approached his passenger's side. Police Officer Little asked why his car smelled like "weed" (**Allegation A, Abuse of Authority, § 87(2)(g)**). Police Officer Little instructed § 87(2)(b) to exit the vehicle. Police Officer Little opened § 87(2)(b)'s driver's side door and grabbed § 87(2)(b)'s left arm and removed him from the car (**Allegation B, Abuse of Authority, § 87(2)(g)**). Police Officer Little brought § 87(2)(b) to the back of the car. Police Officer Bracco opened the front passenger's side door, (**Allegation C, Abuse of Authority, § 87(2)(g)**).

Police Officer Bracco entered through each door in § 87(2)(b)'s vehicle (**with Allegation C**). Police Officer Bracco felt the outside of a backpack and opened it, he lifted the driver's seat floor mat, and he entered the center console (**within Allegation C**). Police Officer Little asked for § 87(2)(b) for his identification twice and § 87(2)(b) did not provide it. Police Officer Little told § 87(2)(b) that he did not have to give it to him, "but that they could solve that by going to the stationhouse," (**Allegation D, Abuse of Authority, § 87(2)(g)**).

Video footage from Police Officer Bracco's and Police Officer Little's body-worn camera footage was obtained for this incident (Board Review 01 and 02 respectively). CCTV footage was also obtained from the Boulevard Houses.

§ 87(2)(b) was issued summons number § 87(2)(b) for § 87(2)(b) by Police Officer Little (Board Review 03).

Findings and Recommendations

Allegation (A) Abuse of Authority: Police Officer Thomas Little questioned § 87(2)(b)

Allegation (B) Abuse of Authority: Police Officer Thomas Little searched the vehicle in which § 87(2)(b) was an occupant.

Allegation (C) Abuse of Authority: Police Officer Christopher Bracco searched the vehicle in which § 87(2)(b) was an occupant.

Allegation (D) Abuse of Authority: Police Officer Thomas Little threatened to arrest § 87(2)(b)

As per § 87(2)(b) on October 29, 2018, at 9:55 p.m. he was double parked on Wortman Avenue in the vicinity of Wortman Avenue and Barbey Street in Brooklyn. He was the driver and sole occupant of a black Mazda with tinted windows. A marked police vehicle pulled up behind him and signaled with their turret lights and horn for a few seconds. § 87(2)(b) pulled over at a

bus stop. The marked police vehicle stopped behind his vehicle. PO Little approached the driver's side window and PO Bracco approached the passenger's side. PO Little asked why his car smelled like "weed?" Police Officer Little instructed § 87(2)(b) to exit the vehicle however, § 87(2)(b) refused. PO Little opened § 87(2)(b)'s driver's side door, grabbed § 87(2)(b)'s left arm, and removed him from the car. PO Little brought § 87(2)(b) to the back of the car. PO Bracco opened the front passenger's side door. PO Bracco asked § 87(2)(b) if he had anything in the car that he would like to tell him about and whether he had any weapons or drugs in the car. PO Bracco entered the back-passenger's side of the car, walked around the car and entered the front and back driver's side doors. At least half of PO Bracco's body was inside of the vehicle. PO Bracco did not recover anything. PO Little asked for § 87(2)(b) for his identification twice and § 87(2)(b) did not provide it. PO Little told § 87(2)(b) that he did not have to give it to him, "but that they could solve that by going to the stationhouse."

As per PO Little, on October 29, 2018, as he was driving east on Wortman Avenue towards Barbey Street, he observed a black Mazda that was stationary in the middle of the westbound lane on Wortman Avenue (Board Review 04). The vehicle had tints, was "hugging" the double yellow line, and was blocking traffic. PO Little decided to approach the car and signaled with the vehicle's turret lights. He and PO Bracco exited their vehicle together. He approached the driver's side and PO Bracco approached the passenger's side. PO Little asked § 87(2)(b) if he knew he was blocking the westbound lane of traffic. Within approximately 30 seconds of speaking to § 87(2)(b), PO Little smelled a strong odor of marijuana emanating from the car. PO Little requested § 87(2)(b)'s driver's license, registration, and insurance. § 87(2)(b) refused this request. PO Little asked § 87(2)(b) to exit his vehicle. § 87(2)(b) refused to do that as well and asked why he was being asked to do so. PO Little mentioned having smelled marijuana. He then opened the car door and asked § 87(2)(b) to step out of the vehicle again. PO Little opened the car door to have § 87(2)(b) exit the vehicle. PO Little did not assist § 87(2)(b) in exiting the vehicle. After two requests for § 87(2)(b) to exit, § 87(2)(b) exited on his own. PO Little escorted § 87(2)(b) to the back of the Mazda. PO Bracco went to § 87(2)(b)'s vehicle to search for the marijuana. PO Bracco entered through the front passenger's door. PO Little did not see if he entered anywhere else. PO Little continued to ask for § 87(2)(b)'s driver's license which he continued to refuse to provide. PO Little informed § 87(2)(b) that while operating a motor vehicle, as per New York State law, a driver is required to provide their license. § 87(2)(b) told PO Little that he did not want to provide his license. PO Little replied, "Either you give me your driver's license now, [or] we'll identify you back at the precinct [stationhouse]." PO Little asked § 87(2)(b) for his license, registration and insurance approximately three to four times, and for his license three to four additional times. After PO Bracco concluded his search, § 87(2)(b) provided his driver's license and PO Little issued him a summons. When PO Little and PO Bracco returned to their vehicle prior to issuing the summons, PO Bracco told him that he observed marijuana ash.

PO Bracco's statement is § 87(2)(g) (Board Review 05). PO Little asked § 87(2)(b) "If you have anything in your car, just let us know so we don't have to go through your stuff." § 87(2)(b) did not reply. PO Bracco did not hear PO Little ask if § 87(2)(b) had any weapons or drugs in the vehicle. PO Bracco did not ask this of § 87(2)(b). PO Bracco did not see PO Little open § 87(2)(b)'s car door. PO Bracco entered § 87(2)(b)'s vehicle to determine the source of the marijuana [odor]. PO Bracco

found ash in the center console. PO Bracco looked on the floor mat, the cupholder, the floor on the passenger's side, the glove box, and "anything" in the front of the car. He "frisked" a blue backpack, felt something that felt like a magazine for a pistol, and asked § 87(2)(b) if there was anything in the bag. § 87(2)(b) replied that there was not. PO Bracco entered the bag and removed a green case. PO Bracco observed ash in the cupholder, but there was nothing to distinguish it from cigarette ash and there were no marijuana cigarettes. Despite believing the ash was the source of the odor of marijuana, they could not prove it was marijuana ash.

At three seconds into PO Little's body-worn camera, PO Little asks § 87(2)(b) if he has identification. § 87(2)(b) says that he does not recall. At nine seconds, PO Little replied, "That's fine, you can come back to the precinct and we can figure it out. Is that a route you'd like to go? You want to go back to the precinct?" PO Little tells § 87(2)(b) that his car smelled like marijuana and at 1:32 minutes asks if he had been smoking marijuana earlier.



Car stop-Little-BWC.mp4

At four seconds into PO Bracco's body-worn camera footage (Car Stop 2-Bracco-BWC.mp4), he enters § 87(2)(b)'s vehicle through the front passenger's seat. He feels the outside of the backpack, opened it and unzipped part of it. He lifts the driver's seat floor mat, enters the center console. Beginning at one second (Car stop-Bracco-BWC.mp4), PO Little and PO Bracco ask if there was anything in the bag that he was not supposed to have.



Car stop-Bracco-BWC.mp4



Car Stop 2-Bracco-BWC.mp4

It is undisputed that PO Little asked § 87(2)(b) if he had been smoking marijuana. It is undisputed that PO Bracco and PO Little asked § 87(2)(b) if there was anything in his bag that he was not supposed to have. It is disputed between the officers and § 87(2)(b) whether PO Bracco asked § 87(2)(b) if he had anything in the car that he would rather tell him about and whether he had any weapons or drugs in the car. The body-worn camera footage captures the first two questions but not the alleged question as to whether § 87(2)(b) had any weapons or drugs in the vehicle.

People v. De Bour, 40 N.Y. 2d 210 (1976) states that the common-law right to inquire, is activated by a founded suspicion that criminal activity is afoot and permits a somewhat greater intrusion in that a policeman is entitled to interfere with a citizen to the extent necessary to gain explanatory information (Board Review 11).

PO Little and PO Bracco both smelled marijuana emanating from § 87(2)(b) vehicle, PO Little while he was conversing with § 87(2)(b) and PO Bracco upon entering the vehicle. Furthermore, PO Bracco believed that when he frisked § 87(2)(b)'s bag, he felt a magazine case. § 87(2)(g)

§ 87(2)(g)

People v Chestnut, 43 A.D. 2d 260 (1974) states that the smell of marijuana smoke, with nothing more, can be sufficient to provide police officers with probable cause to search an automobile and its occupants (Board Review 06).

A police officer may, as a precautionary measure and without particularized suspicion, require occupants of a lawfully stopped vehicle to exit the car. People v. Garcia, 20 N.Y. 3d 317 (2012) (Board Review 08).

§ 87(2)(g)

§ 87(2)(g)

Patrol Guide section 209-03 states that when issuing a civil summons, an officer is to establish the violator's identity and mailing address through observation of valid identification documents (Board Review 07). If they do not possess a valid form of identification, the officer is to remove the violator to the command.

It is undisputed that § 87(2)(b) did not provide his identification when asked to present it by PO Little. The body-worn camera footage captured § 87(2)(b) telling PO Little that he did not recall if he had identification. It is undisputed that PO Little told § 87(2)(b) in response, that he could go to the precinct stationhouse to figure it out. § 87(2)(g)

Civilian and Officer CCRB Histories

- § 87(2)(b)

- PO Bracco has been a member of service for one year and this is the first CCRB complaint to which he had been a subject.
- PO Little has been a member of service for six years and has been a subject in two CCRB complaints and six allegations, none of which were substantiated. § 87(2)(g)

Mediation, Civil and Criminal Histories

- § 87(2)(b) was offered mediation at the conclusion of his interview and declined to have the complaint mediated.
- § 87(2)(b) (Board Review 10).
- A Notice of Claim search was conducted on January 29, 2019, from the New York City Comptroller's Office and will be added to the case file upon receipt.

Squad No.: _____

Investigator:	_____	_____	_____
	Signature	Print Title & Name	Date

Squad Leader:	_____	_____	_____
	Signature	Print Title & Name	Date

Reviewer:	_____	_____	_____
	Signature	Print Title & Name	Date